

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR06-157MJP
)	
Plaintiff,)	
)	
v.)	PLEADING FOR STATUS
)	CONFERENCE OF
HENRY ROSENAU,)	NOVEMBER 9, 2011
)	
Defendant.)	

COMES NOW the United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Marc A. Perez and Susan M. Roe, Assistant United States Attorneys for said District, and files this short pleading to assist the Court at the Status Conference on November 9, 2011. This is intended to give the Court information regarding the unavailability of essential government witnesses, first brought to the Court's attention in the government's Emergency Motion for Trial Continuance. Dkt # 54.

RCMP: Defendant Rosenau's new civil claim, *Rosenau v. Regina*, was dismissed at its initial hearing on November 2, 2011. RCMP Members were again able to attend trial, testify, and provide evidence at that time per their counsel. RCMP did release reports and additional photographs to the United States in anticipation of the trial. On November 4, 2011, Defendant Rosenau filed a Notice appealing the November 2, 2011 decision. In response, RCMP Counsel has reissued his advice that the Members may only give testimony or provide

1 evidence pursuant to a formal Mutual Legal Assistance Treaty. *See Exhibit 1. Notice of*
2 *Appeal; Declaration of Les Rose.* The government has drafted such a request although it has
3 not yet been approved.

4 KIP WHELPLEY: The government was able to acquire copies of the court documents
5 in *Rosenau v. Whelpley* through the Canadian Ministry of Justice. The Order previously was
6 provided to the Court and the two newly acquired documents are exhibits to the
7 Government's Response to Defendant's Motion for Revocation of Detention Order, also filed
8 today. Those exhibits are incorporated by this reference. Canadian Government counsel
9 have advised this office that the Order appears to be a valid.

10 It may be that, as a default order, it is readily set aside however that must be done
11 through the British Columbia Court. Today Mr. Whelpley and his local public defender,
12 Bruce Erickson, have been forwarded two possible legal aid groups which may be of help. In
13 addition, the Government is exploring the possibility of the United States, Department of
14 Justice, undertaking or underwriting the representation of Whelpley, pursuant to 28 U.S.C
15 § 517 and 28 CFR 50.15 and 50.16. This request is underway. Further the government's
16 MLAT request includes a request to take the testimony of Mr. Whelpley.

17 GLEN STEWART: Mr. Stewart supposedly provided an affidavit in support of
18 Defendant Rosenau in *Rosenau v. Regina*. The government has not yet acquired a copy of
19 his affidavit or of Defendant Rosenau's. Under Canadian law, exhibits are the property of
20 the Court and not given to the public absent the Court's permission. Permission is being
21 applied for, however, has not yet been granted.

22 RCMP Members were counseled to stop work on this case and therefore have not
23 contacted Mr. Stewart since late October. Therefore, the government does not know the
24 status of Mr. Stewart regarding his availability.

25 CONCLUSION

26 The government renews its motion for a continuance of the trial in order to pursue an
27 MLAT and obtain the necessary and essential testimony of these witnesses. The time
28 necessary for obtaining foreign evidence pursuant to a formal request or an MLAT is

1 excludable time pursuant to Title 18 U.S.C. § 3161. The unavailability of an essential witness
2 is a separate basis to continue a trial; that time also is excludable.

3 Defendant Rosenau's legal maneuvers, and his actions alone, have caused this delay.
4 By abandoning his lawsuits Rosenau could stand trial within the current speedy trial time
5 limits. By continuing with his vexatious Canadian civil suits, he has caused a significant
6 delay in the trial.

7 DATED this 8th day of November, 2011.

8 Respectfully submitted,

9 JENNY A. DURKAN
10 United States Attorney

11
12 s/Susan M. Roe
13 SUSAN M. ROE
14 Assistant United States Attorney
15 United States Attorney's Office
16 700 Stewart Street, Suite 5220
17 Seattle, WA 98101-1271
18 Telephone: (206) 553-1077
19 Fax: (206) 553-0755
20 E-mail: susan.roe@usdoj.gov

21 s/Marc A. Perez
22 Marc A. Perez
23 United States Attorney's Office
24 1201 Pacific Avenue
25 Suite 700
26 Tacoma, Washington 98402
27 Telephone: (253) 428-3822
28 Fax: (253) 428-3826
Email: Marc.Perez@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on 11/8/11 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

s/Karen Wolgamuth
KAREN WOLGAMUTH
Paralegal
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-5050
FAX: (206) 553-4440
E-mail: karen.wolgamuth@usdoj.gov